

**Opening Statement of the Honorable John Shimkus**  
**Subcommittee on Environment and the Economy**  
**Hearing on “Implementing the Nuclear Waste Policy Act – Next Steps”**  
**September 10, 2013**

*(As Prepared for Delivery)*

On August 13, the U.S. Court of Appeals for the District of Columbia Circuit granted a writ of mandamus stating that “...the Nuclear Regulatory Commission must promptly continue with the legally mandated licensing process.” The purpose of our hearing today is to examine the next steps for NRC and the Department of Energy to implement the court’s decision. Thank you, Chairman Macfarlane and Assistant Secretary Lyons for testifying today.

In its decision, the court rebuked the NRC for “simply flouting the law,” something this committee recognized long ago. How is it that an independent agency with a clear statutory responsibility is criticized by a federal court for having “...no current intention of complying with the law”? Today’s hearing will be focused on looking forward, but we have to be cognizant of the agency actions that led to this situation and vigilant against resurgent efforts to undermine the statutory process. The commission’s recent order to give the parties until September 30th to comment on how the NRC should proceed, however well-intentioned, is eerily reminiscent of past NRC efforts to slow the review process and to stall the release of its safety evaluation report.

On June 3, 2008, the DOE filed a license application for construction authorization to build a repository at Yucca Mountain. NRC accepted the application and docketed it on Sept. 8, 2008. By the end of 2009, it was becoming clear that the DOE would close down the Yucca Mountain program, abandoning the 30 years of research and \$15 billion dollars invested. By March 3, 2010, the DOE filed a motion to withdraw the license application in a manner that would prevent any future consideration of the site. On June 29 of 2010, the NRC’s Construction Authorization Board denied DOE’s motion. In spite of this, then NRC Chairman Greg Jaczko was already laying the groundwork to unilaterally cease the NRC’s review of the license application as we learned in our hearing to review the NRC Inspector General’s report on this subject.

According to the IG’s report, in spring of 2010, NRC staff informed Chairman Jaczko that they were ahead of schedule and could issue SER Volumes 1 and 3 earlier than the previously projected dates of August and November of 2010. In fact, the NRC Executive Director had the impression that Volume 3 would be ready for publication in summer 2010. In June of 2010, Chairman Jaczko directed the staff in a memo to maintain their public schedule – and not to issue Volumes 1 and 3 early.

At that point, it was clear to the deputy executive director that the chairman planned to close down the license review on October 1st and that “the practical effect of the Chairman’s June memorandum was that it prevented the staff from issuing Volume 3 should it have been finalized prior to October 1.” Indeed on October 4th, Chairman Jaczko directed the staff to cease its review of the license citing the continuing resolution even though the CR would continue to provide funding for the review at the existing level of \$29 million dollars. He later told the IG that it was his responsibility to manage the agency’s workload and workflow with regard to scheduling.

Here we are, nearly a month after the DC Circuit issued a writ of mandamus, and the NRC’s only action we’ve seen so far is to invite the parties to comment...by September 30. Electricity consumers and taxpayers have waited 30 years and paid \$15 billion dollars to find out whether our independent nuclear safety regulator concluded that Yucca Mountain would be safe or not, releasing the SER is the next step in the NRC’s process, the NRC has the money to do it, a federal court has ruled that the NRC must proceed, and the NRC says “hold on, let’s ask the parties what they think.” This does not seem like the posture of an agency intent on complying with a writ of mandamus.

Instead, the NRC appears to again be stalling. I won't speak for other members on this committee, but I want to be very clear: I strongly believe the NRC's first order of business is to complete and release the Safety Evaluation Report. Transparency in this matter is essential to rebuilding the agency's reputation as an independent and objective regulator.

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